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Jeff S. Jordan
Office of General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 7097

Dear Mr. Jordan:

We write as counsel to Correct the Record ("CTR") and Elizabeth Cohen in her official capacity as treasurer ("Respondents") in response to the complaint filed by Dr. Jack A. Shulman on July 1, 2016 (the "Complaint"). The Complaint fails to set forth sufficient facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act").¹

Legal Analysis

"The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act]."² "Unwarranted legal conclusions from asserted facts" or "mere speculation" are not accepted as true.³ The Complaint offers nothing beyond such conclusions and speculation and therefore cannot establish reason to believe that Respondents violated the Act.

The Complaint alleges that Correct the Record is coordinating with the Hillary Clinton presidential campaign to employ staff to post positive information about Hillary Clinton on Facebook, Twitter, and online blogs. Federal law treats a coordinated communication as an in-kind contribution to a campaign.⁴ Under Commission rules, a communication is a coordinated communication if it meets three prongs: first, it is paid for by a person other than the candidate, authorized committee, or political party; second, it must satisfy one or more content standards; and third, it must satisfy one of several conduct standards.⁵ The Complaint does not specify a single, specific communication to which the coordinated communications rules might be applied.

¹ See 11 C.F.R. § 111.4(d)(3).

² FEC Matter Under Review 4960 (Clinton for U.S. Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).

³ *Id.*

⁴ See 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 109.20.

⁵ See 11 C.F.R. § 109.21.

Where the Complaint vaguely references pro-Hillary Clinton messages on Facebook, Twitter, and online blogs, those communications would not satisfy the "coordinated communications" test because they cannot satisfy the content prong. The content prong can be satisfied in one of five ways.⁶ It is satisfied if the communication is an "electioneering communication," which must be publicly distributed by a television station, radio station, cable television station, or satellite system within 60 days before a general election or 30 days of a primary election.⁷ The Complaint does not allege that Respondents have produced any television or radio advertisements that would qualify as electioneering communications.

The remaining four ways to satisfy the content prong require that the communication be a "public communication,"⁸ which the Act defines as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public or any other form of general public political advertising."⁹ Under Commission regulations, "general public political advertising" does "not include communications over the Internet, except for communications placed for a fee on another person's Web site."¹⁰ Thus, online content – even if it costs money to make – is not a "public communication" unless a fee is paid to post it on another's Web site.¹¹ The Complaint does not identify any online public communications for which a fee was paid. Thus, the Commission has no reason to believe that Respondents impermissibly made coordinated communications.

⁶ FEC Matter Under Review 6722 (House Majority PAC), General Counsel's Report at 4 (Aug. 6, 2013) (citing 11 C.F.R. § 109.21(c)(1)-(5)).

⁷ See *id.* (citing 11 C.F.R. §§ 109.21(c)(1), 100.29(a), (b)(1)).

⁸ *Id.* (citing 11 C.F.R. § 109.21(c)(2)-(5)).

⁹ 52 U.S.C. § 30101(22).

¹⁰ 11 C.F.R. § 100.26; see also

¹¹ See, e.g., Federal Election Commission, Internet Communications, 71 Fed. Reg. 18589, 18595 (May 12, 2006)(explanation and justification) ("[P]osting a video on a Web site does not result in a 'public communication' unless it is placed on another person's Web site for a fee," even if costs were incurred to film the video); FEC Matter Under Review 6722 (House Majority PAC), General Counsel's Report (Aug. 6, 2013)(video placed on YouTube for no fee is not a public communication); FEC Matter Under Review 6522 (Lisa Wilson-Foley for Congress, *et al.*) General Counsel's Report at 7 (Feb. 5, 2013) (YouTube and Facebook postings and a website fail the content prong of the coordinated communications test because they are not placed for a fee on another's Web site and are therefore not public communications); FEC Matter Under Review 6477 (Turn Right USA), General Counsel's Report at 8 (Dec. 27, 2011) (video posted on a website for which respondent paid no fee did not satisfy the content prong of the coordinated communication test); FEC Matter Under Review 6657 (Akin for Senate), General Counsel's Report at 6-7 (May 16, 2013) ("The Commission has narrowly interpreted the term Internet communication 'placed for a fee,' and has not construed that phrase to cover payments for services necessary to make an Internet communication," including renting an email list); FEC Matter Under Review 6414 (Carnahan in Congress Committee *et al.*), General Counsel's Report at 12 (Apr. 11, 2012) (a website is not a public communication even though researchers were paid to help build it).

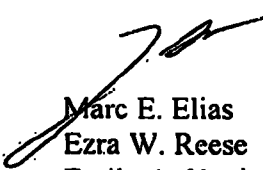
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The Complaint also makes unsupported allegations about the sources of Correct the Record's funding, citing only anonymous "sources in Saudi Arabia."¹² Those allegations have no support in any of Correct the Record's FEC filings to date. The Commission has dismissed allegations that were supported only by "an unidentified source's statement that itself lacks any indicia of reliability,"¹³ and should do so again here.

Conclusion

For the foregoing reasons, we respectfully request that the Commission dismiss this matter and take no further action.

Very truly yours,



Marc E. Elias
Ezra W. Reese
Emily A. Hogin
Counsel to Respondents

¹² Complaint at 2.

¹³ FEC Matter Under Review 6506 (Gregory W. Meeks, et. al), First General Counsel's Report at 5 (Feb. 15, 2013).